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9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

11 In re:
12 ENNIS HOMES, INC.,
13 Debtor-In-Possession.

Case No. 09-10848-A-11

Chapter 11

DC No.: KDG-14

14 Date: September 2, 2009
15 Time: 1:30 p.m.
16 Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California
17 Judge: Honorable Whitney Rimel

18 **MOTION FOR ORDER DIRECTING JOINT ADMINISTRATION OF**
19 **CHAPTER 11 CASES FILED BY ENNIS LAND DEVELOPMENT, INC.;**
ENNIS HOMES, INC.; AND ENNIS ENTERPRISES 190, LLC

20 **TO THE HONORABLE WHITNEY RIMEL, U.S. BANKRUPTCY JUDGE:**

21 Ennis Homes, Inc. ("Ennis Homes") files its *Motion for Order Directing Joint*
22 *Administration of Chapter 11 Cases Filed by Ennis Land Development, Inc.; Ennis Homes,*
23 *Inc.; and Ennis Enterprises 190, LLC;* and represents:

24 **I. INTRODUCTION**

25 1. Federal Rule of Bankruptcy Procedure 1015(b) permits the Court to order joint
26 administration of cases involving affiliates in cases where the affairs of the affiliates are
27 sufficiently intertwined to make joint administration more efficient and economical than the
28 administration of separate cases. The Court should order the joint administration of the

Chapter 11 cases of Ennis Homes, Ennis Land Development, Inc. ("Ennis Land"), and Ennis Enterprises 190, LLC ("Ennis Enterprises") because (1) Ennis Homes, Ennis Land, and Ennis Enterprises are Affiliates, (2) Ennis Homes is engaged in a common enterprise with Ennis Land and Ennis Enterprises, and (3) joint administration of the Chapter 11 cases would be efficient and economical for all parties involved.

II. BACKGROUND

2. Ennis Homes is a California corporation that is a residential construction home builder, conducting business primarily in Central California. It currently employs approximately 34 people. Ennis Homes constructs single family homes and develops lots on real property owned by Ennis Homes and Ennis Land. Ennis Homes commenced its Chapter 11 case by filing its Voluntary Petition under Chapter 11 of the Code on February 2, 2009.

3. Ennis Land is a California corporation doing business in the San Joaquin Valley. Ennis Land's business consists of acquiring and developing land for building and selling single family homes. Ennis Land owns 13 residential developments. Ennis Land filed a Voluntary Petition under Chapter 11 on July 17, 2009.

4. Ennis Enterprises is limited liability company that holds 190 acres of real property to be developed by Ennis Homes. Ennis Enterprises commenced its Chapter 11 case by filing its Voluntary Petition under Chapter 11 of the Code on June 5, 2009.

III. ENNIS HOMES, ENNIS LAND AND ENNIS ENTERPRISES ARE AFFILIATED

5. Common ownership creates an affiliate relationship between entities under 11 U.S.C. Section 101(2)(B). See *In re Lettick Typographic, Inc.* 103 B.R. 32, 39 (Bankr. D. Conn. 1989).

6. Ennis Homes and Ennis Land are affiliated because (1) Ben Ennis and his wife are the largest shareholders in Ennis Homes, (2) the president and 25% shareholder of Ennis Homes is Brian G. Ennis, and (3) Pamela R. Ennis is Secretary, Treasurer, and 25% shareholder of Ennis Homes. Brian G. Ennis and Pamela R. Ennis are officers and the sole shareholders of Ennis Land. However, Ennis Land is not a shareholder of Ennis Homes and Ennis Homes does not own shares in Ennis Land.

1 7. Ennis Homes and Ennis Enterprises are affiliated because of the Ennis family
2 relationship. Managing Member of Ennis Enterprises, Ben Ennis and his wife are the largest
3 shareholders in Ennis Homes. The president and 25% shareholder of Ennis Homes is Brian G.
4 Ennis. Pamela R. Ennis is Secretary, Treasurer, and 25% Shareholder of Ennis Homes. Brian
5 and Pam Ennis are the children of Ben Ennis. However, Ennis Homes is not a member of
6 Ennis Enterprises and Ennis Enterprises does not own shares in Ennis Homes.

7 8. Ennis Land and Ennis Enterprises are affiliated because the manager of Ennis
8 Enterprises, Ben A. Ennis, is the father of Brian G. Ennis and Pamela R. Ennis, who are all
9 shareholders and officers of Ennis Land. However, Ennis Land is not a member of Ennis
10 Enterprises and Ennis Enterprises does not own shares in Ennis Land. Ennis Enterprises' only
11 member is the Ben and Roberta Ennis Family Trust. Ennis Land, Brian G. Ennis, and Pamela
12 R. Ennis are creditors of Ennis Enterprises because they are guarantors for Ennis Enterprises'
13 land loan with Bank of the Sierra.

14 9. Ennis Homes requests that the court take Judicial Notice of the Statements of
15 Financial Affairs filed by Ennis Homes, Ennis Land, and Ennis Enterprises in their respective
16 Chapter 11 cases, which indicates the ownership and officers and managers of each entity.

17 **IV. ENNIS HOMES IS ENGAGED IN A COMMON ENTERPRISE**
18 **WITH ENNIS LAND AND ENNIS ENTERPRISES**

19 10. Ennis Homes, Ennis Land and Ennis Enterprises are engaged in a common
20 enterprise that is the purchase of land for development and resale as single family homes.
21 Ennis Land is a land holding company that purchases tracts of land. Ennis Homes is a general
22 building contractor that contracts with sub-contractors for the installation of site infrastructure
23 and construction of homes on the land owned by Ennis Land. Also, Ennis Homes develops its
24 own real property. Ennis Homes contracts with interested home buyers for the sale of homes.
25 Ennis Land transfers homes and lots to be sold by Ennis Homes to Ennis Homes the day before
26 they are sold to the interested home buyers. Ennis Homes then completes the sale of the homes
27 to the buyers. Ennis Land is owed money by Ennis Homes because Ennis Land creates a note
28 payable by Ennis Homes when Ennis Land transfers a lot to Ennis Homes. Ennis Enterprises is

1 a land holding company that holds land that will be developed by Ennis Homes. Therefore,
2 Ennis Land, Ennis Homes, and Ennis Enterprises are engaged in a common enterprise with a
3 unity of interest.

4 11. Almost all of Ennis Homes' major bank creditors are also Ennis Land's major
5 bank creditors. Further, Ennis Homes and Ennis Land have cross guaranteed all of the major
6 bank debts owed by each debtor. Most of the major bank debts are also guaranteed by Brian
7 Ennis, Pam Ennis and Ben Ennis. The largest secured creditor in the Ennis Enterprises case,
8 Bank of the Sierra, has a guaranty of its debt from the Ennis Land as well as guarantees from
9 Brian and Pam Ennis. Therefore, there is significant overlap in the Ennis Homes' debts with
10 those debts owed by Ennis Land and Ennis Enterprises because of the cross guarantees by the
11 entities and individuals. Ennis Homes requests that the court take Judicial Notice of the
12 Schedules D and H and Statement of Financial Affairs filed by Ennis Homes, Ennis Land, and
13 Ennis Enterprises in their respective Chapter 11 cases.

14 12. There is a lot of overlap and confusion among subcontractors as to which entity,
15 Ennis Homes or Ennis Land, owes the money to the subcontractor. Subcontractors regularly
16 record mechanic's liens against property owned by either Ennis Land or Ennis Homes and
17 name the other entity as the owner of the real property or the debtor. This demonstrates the
18 close nature of the Ennis Homes and Ennis Land's businesses: The subcontractors see the two
19 entities as engaged in a common enterprise.

20 13. Further, some tracts are owned in part by both Ennis Homes and Ennis Land.
21 These commonly owned tracts are not owned in common, but several lots will be owned by one
22 entity and the other lots by the other entity. Ennis Homes and Ennis Land will continue to
23 work together for the development of all tracts owed by Ennis Homes and Ennis Land, but this
24 will especially be necessary in the tracts where some lots are owned by Ennis Homes and other
25 lots are owned by Ennis Land.

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V. **JOINT ADMINISTRATION OF CHAPTER 11 CASES IS
APPROPRIATE AND ALLOWED UNDER THE LAW**

14. Federal Rule of Bankruptcy Procedure 1015(b) permits the Court to order joint administration of cases involving related entities. These entities include a debtor and an affiliate. See Federal Rule of Bankruptcy Procedure 1015(b)(4). In such situations, the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than the separate administration of the cases.

15. Joint administration of an estate involves handling two or more cases together for administrative purposes and allows the Court to keep one docket. See *In re Coles*, 14 B.R. 5 (Bankr. E.D. Penn. 1981). Also, joint administration of cases allows pleadings which may be filed in duplicate or triplicate [i.e. one in each case] to be filed under one number. See *In re N.S. Garrett & Sons*, 63 B.R. 189 (Bankr. E.D. Alaska 1986). Furthermore, joint administration can enhance the fair treatment of creditors in bankruptcy cases by ensuring that all creditors receive notice of all matters filed or pending in the related cases.

16. Common ownership creates an affiliate relationship between entities under 11 U.S.C. Section 101(2)(B). See *In re Lettick Typographic, Inc.* 103 B.R. 32, 39 (Bankr. D. Conn. 1989). In the present case, Brian G. Ennis and Pamela R. Ennis are the sole shareholders of Ennis Land. Ben Ennis and his wife are the largest shareholders in Ennis Homes; Brian G. Ennis is the president and 25% shareholder of Ennis Homes; and Pamela R. Ennis is the Secretary, Treasurer, and 25% shareholder of Ennis Homes. Ennis Land, Brian G. Ennis, and Pamela R. Ennis are creditors of Ennis Enterprises because they are guarantors for Ennis Enterprises' land loan with Bank of the Sierra; however, Ennis Enterprises' only member is the Ben and Roberta Ennis Family Trust. These facts create an "affiliate" relationship between Ennis Land, Ennis Homes, and Ennis Enterprises within the parameters of Bankruptcy Rule 1015(b)(4).

17. Ennis Homes' affairs are sufficiently intertwined with Ennis Land and Ennis Enterprises to make joint administration more efficient and economical than the separate administration of the cases. This is true because Ennis Homes is engaged in a common

1 enterprise with Ennis Land and Ennis Enterprises as described above. Further, Ennis Homes,
2 Ennis Land, and Ennis Enterprises will each be working with a similar set of creditors
3 throughout the administration of their cases because the entities' major creditors are the same.
4 Finally, Ennis Homes, Ennis Land, and Ennis Enterprises has a significant interest in the other
5 entities' success because of the cross guarantees by the entities and individuals controlling the
6 entities.

7 18. Ennis Homes, Ennis Land and Ennis Enterprises will be able to jointly manage
8 their administrative matters and share in the cost administration if their cases are jointly
9 administered. Ennis Homes, Ennis Land and Ennis Enterprises will be able to prepare and file
10 a Joint Disclosure Statement and Joint Plan of Reorganization. Joint Administration will save
11 the Bankruptcy Court substantial time and resources in handling one case as opposed to three
12 cases. Creditors will save costs in dealing with one case as opposed to three. Also, Joint
13 Administration will save Ennis Homes, Ennis Land, and Ennis Enterprises administrative costs
14 associated with their Chapter 11 cases.

15 19. The Exhibit "A" attached hereto represents a caption that can be used if the
16 Motion is granted and the three Chapter 11 cases are ordered to be jointly administered.

17 VI. CONCLUSION

18 Joint administration of the Chapter 11 cases filed by Ennis Homes, Ennis Land, and
19 Ennis Enterprises will be more efficient and fair to all parties concerned than the separate
20 administration of the three cases. Furthermore, the joint administration of the three Chapter 11
21 cases will avoid unnecessary costs and delays.

22 WHEREFORE, the Ennis Homes prays that:

23 1. *The Motion for Order Directing Joint Administration of Chapter 11 Cases filed*
24 *by Ennis Land Development, Inc.; Ennis Homes, Inc.; and Ennis Enterprises 190, LLC, be*
25 *granted;*

26 2. The Chapter 11 cases for Ennis Homes, Ennis Land, and Ennis Enterprises be
27 jointly administered;

28 / / /

1 3. Documents should be filed in Ennis Homes Chapter 11 case and will be deemed
2 to be filed in the Ennis Land and Ennis Enterprises Chapter 11 cases; and

3 4. Ennis Homes be given such other and further relief as the Court deems just and
4 proper.

5 Date: August 5, 2009

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIB & KIMBALL, LLP

7
8 By /s/ Hagop T. Bedoyan

Hagop T. Bedoyan,
Attorneys for Debtor-in-Possession

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

ENNIS HOMES, INC.,

Debtor.

ENNIS LAND DEVELOPMENT, LLC,

Debtor.

ENNIS ENTERPRISES 190, LLC,

Debtor.

Case No. 09-10848-A-11

Jointly Administered with
Case No. 09-16750-A-11 and
Case No. 09-15237-A-11

Chapter 11

DC No.

Date:

Time:

Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

Judge: Honorable Whitney Rimel